

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference see form PCT/ISA/220		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/EP2004/000980	International filing date (day/month/year) 03.02.2004	Priority date (day/month/year) 05.02.2003
International Patent Classification (IPC) or both national classification and IPC B01F13/00, A61F2/46		
Applicant SUMMIT MEDICAL LIMITED		

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Muller, G Telephone No. +49 89 2399-2331	
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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/000980

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - a sequence listing
 - table(s) related to the sequence listing
 - b. format of material:
 - in written format
 - in computer readable form
 - c. time of filing/furnishing:
 - contained in the international application as filed.
 - filed together with the international application in computer readable form.
 - furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/000980

Box No. II Priority

1. The following document has not been furnished:

- copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
 translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
Industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	1-3,6,9-14
	No: Claims	4,5,7,8
Inventive step (IS)	Yes: Claims	1-3,6
	No: Claims	4,5,7-14
Industrial applicability (IA)	Yes: Claims	1-14
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V.

1. The following documents are referred to in this communication:

D1 : WO 01/56514 A (FOSTER DAVID ; Summit Medical LTD (GB)) 9 August 2001 (2001-08-09)
D2 : US 5 494 349 A (SEDDON PETER) 27 February 1996 (1996-02-27)

2. The application contains more than one independent claim per category, namely claims 1, 4, 7, 9 and 14. The aforementioned claims therefore lack conciseness, as required under Art. 6 PCT. Moreover, lack of clarity as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought and places an undue burden on others seeking to establish the extent of the protection. In order to fulfil the clarity requirement of Art. 6 PCT, the application should contain only one independent claim per category.

3. INDEPENDENT CLAIM 4

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 4 is not new in the sense of Article 33(2) PCT.

Document D1 discloses (the references in parenthesis applying to this document): an orthopaedic cement mixing apparatus (see title) comprising a mixing chamber (ref.1 in Fig.1) and a dispensing chamber (ref.2 in Fig.1), the mixing chamber having an outlet aperture and the dispensing chamber having an inlet aperture, the outlet aperture and the inlet aperture being in cement flow communication, the apparatus further comprising a mixing paddle extending into said mixing chamber (ref.4 in Fig.1) and a rotatable handle (ref. 5 in Fig.1) coupled to said paddle by a gear mechanism (ref.8 in Fig.1) arranged such that rotation of said handle causes said paddle to rotate about its own axis and also moves the axis of rotation of the paddle within the chamber whereby the paddle is moved around substantially the entire cement containing region of the interior of the chamber (see page 7, line 33 to page 8, line 7).

4. INDEPENDENT CLAIM 7

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 7 is not new in the sense of Article 33(2) PCT.

Document D2 discloses (the references in parenthesis applying to this document): an orthopaedic cement mixing apparatus (see title) comprising a mixing chamber (ref.1 in

Fig.2) and a mixing paddle extending into said mixing chamber (ref.7 in Fig.2) and a rotatable handle (ref. 4 in Fig.2) coupled to said paddle by a gear mechanism (refs.5 and 11 in Fig.2) arranged such that rotation of said handle causes said paddle to rotate about its own axis and also moves the axis of rotation of the paddle within the chamber whereby the paddle is moved around substantially the entire cement containing region of the interior of the chamber (see col 4, lines 38-56) whereby further a scraper element is connected to said gear mechanism so as to rotate with the axis of rotation of the paddle in the same or in the opposite direction (see col 4, lines 57-59, the vane extending from the axle to the wall of the bowl as shown in the left part of Fig.2 can be considered as a scraper element).

5. DEPENDENT CLAIMS 5, 8

Dependent claims 5, 8 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Article 33(2) and (3) PCT).

6. INDEPENDENT CLAIM 1

Independent claim 1 seems to meet the requirements of the PCT with respect to novelty and inventive step.

Claims 2, 3 are dependent on claim 1 and as such also meet the requirements of the PCT with respect to novelty and inventive step.

7. INDEPENDENT CLAIM 9

At this stage, and as mentioned under the above point 1, it is not meaningful to carry out a full examination of the remaining claims 9-14. However, independent claim 14 seems to be incomplete as it end in the middle of a sentence, and independent claim 9 seems to lack unity with claim 1. Moreover the subject-matter of these claims seems also to lack an inventive step in regard of the disclosure of D1 and D2.